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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-0785.2/19 2nd draft

ATTY/TYPIST: PW:amh

BRIEF DESCRIPTION: Concerning records disclosure and retention obligations of the legislative branch.

1       AN ACT Relating to records disclosure and retention obligations  
2 of the legislative branch; amending RCW 42.56.010, 42.56.040,  
3 42.56.060, 42.56.070, 42.56.080, 42.56.120, 42.56.150, 42.56.210,  
4 42.56.230, 42.56.250, 42.56.280, 42.56.290, 42.56.520, 42.56.540,  
5 42.56.565, 42.56.580, 42.40.020, 40.14.050, 40.14.100, 40.14.110,  
6 40.14.120, and 42.56.550; adding a new section to chapter 42.40 RCW;  
7 adding a new section to chapter 42.56 RCW; creating a new section;  
8 repealing RCW 40.14.130, 40.14.140, 40.14.150, 40.14.160, 40.14.170,  
9 40.14.180, and 42.56.560.

10   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11       NEW SECTION.     **Sec. 1.**   The legislature finds that democracy  
12 functions best when the public knows who influences the government  
13 and how government leaders carry out their duties. A free and open  
14 media is essential to this. As the original initiative approved by  
15 voters in 1972 states, "free and open examination of public records  
16 is in the public interest, even though such examination may cause  
17 inconvenience or embarrassment to public officials and others."

18       However, the extent of that examination must not be so unlimited  
19 that it prevents the creation and vetting of effective policy. As the  
20 branch of state government responsible for adoption of budgets,  
21 lawmaking, and oversight of the implementation of laws and budgets by

1 the executive branch, the legislative branch has a unique role in our  
2 democracy. The legislature is a branch of government and not an  
3 "agency" of the state, which refers in chapter 42.56 RCW to the  
4 executive branch agencies and local governments. The purpose of this  
5 act is to guarantee public access to legislative information without  
6 compromising the legislature's ability to produce the best possible  
7 public policy. To that end, this act establishes how the public  
8 records act applies to the legislative branch of state government.

9 **PART I - RECORDS DISCLOSURE OBLIGATIONS**

10 **Sec. 101.** RCW 42.56.010 and 2017 c 303 s 1 are each amended to  
11 read as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Agency" includes all state agencies and all local agencies.  
15 "State agency" includes every state office, department, division,  
16 bureau, board, commission, or other state agency. "Local agency"  
17 includes every county, city, town, municipal corporation, quasi-  
18 municipal corporation, or special purpose district, or any office,  
19 department, division, bureau, board, commission, or agency thereof,  
20 or other local public agency.

21 (2) "Legislative branch" means the senate, the house of  
22 representatives, the joint legislative audit and review committee,  
23 the joint legislative transportation committee, the legislative  
24 evaluation and accountability program committee, the office of  
25 legislative support services, the joint legislative systems  
26 committee, the statute law committee, the office of the code reviser,  
27 the office of the state actuary, the redistricting commission, the  
28 legislative ethics board, and any other agency that is subject to the  
29 direct control of the senate or the house of representatives.

30 (3) "Person in interest" means the person who is the subject of a  
31 record or any representative designated by that person, except that  
32 if that person is under a legal disability, "person in interest"  
33 means and includes the parent or duly appointed legal representative.

34 ~~((+3))~~ (4) "Public record" includes any writing containing  
35 information relating to the conduct of government or the performance  
36 of any governmental or proprietary function prepared, owned, used, or  
37 retained by any state or local agency or the legislative branch  
38 regardless of physical form or characteristics. ~~((For the office of~~

1 ~~the secretary of the senate and the office of the chief clerk of the~~  
2 ~~house of representatives, public records means legislative records as~~  
3 ~~defined in RCW 40.14.100 and also means the following: All budget and~~  
4 ~~financial records; personnel leave, travel, and payroll records;~~  
5 ~~records of legislative sessions; reports submitted to the~~  
6 ~~legislature; and any other record designated a public record by any~~  
7 ~~official action of the senate or the house of representatives.))~~ This  
8 definition does not include records that are not otherwise required  
9 to be retained by the agency and are held by volunteers who:

10 (a) Do not serve in an administrative capacity;

11 (b) Have not been appointed (~~by the agency~~) to (~~an agency~~) a  
12 board, commission, or internship; and

13 (c) Do not have a supervisory role or delegated agency authority.

14 (~~(4)~~) (5) "Writing" means handwriting, typewriting, printing,  
15 photostating, photographing, and every other means of recording any  
16 form of communication or representation including, but not limited  
17 to, letters, words, pictures, sounds, or symbols, or combination  
18 thereof, and all papers, maps, magnetic or paper tapes, photographic  
19 films and prints, motion picture, film and video recordings, magnetic  
20 or punched cards, discs, drums, diskettes, sound recordings, and  
21 other documents including existing data compilations from which  
22 information may be obtained or translated.

23 **Sec. 102.** RCW 42.56.040 and 2012 c 117 s 127 are each amended to  
24 read as follows:

25 (1) Each state agency shall separately state and currently  
26 publish in the Washington Administrative Code (~~and~~), each local  
27 agency shall prominently display and make available for inspection  
28 and copying at the central office of such local agency, and the  
29 legislature shall publish in a prominent place on its web site, for  
30 guidance of the public:

31 (a) Descriptions of its central and field organization and the  
32 established places at which, the employees from whom, and the methods  
33 whereby, the public may obtain information, make submittals or  
34 requests, or obtain copies of agency or legislative branch decisions;

35 (b) Statements of the general course and method by which its  
36 operations are channeled and determined, including the nature and  
37 requirements of all formal and informal procedures available;

38 (c) Rules of procedure;

1 (d) Substantive rules of general applicability adopted as  
2 authorized by law, and statements of general policy or  
3 interpretations of general applicability formulated and adopted by  
4 the agency or legislative branch; and

5 (e) Each amendment or revision to, or repeal of any of the  
6 foregoing.

7 (2) Except to the extent that he or she has actual and timely  
8 notice of the terms thereof, a person may not in any manner be  
9 required to resort to, or be adversely affected by, a matter required  
10 to be published or displayed and not so published or displayed.

11 **Sec. 103.** RCW 42.56.060 and 1992 c 139 s 11 are each amended to  
12 read as follows:

13 No public agency, public official, public employee, or custodian,  
14 nor the legislative branch, shall be liable, nor shall a cause of  
15 action exist, for any loss or damage based upon the release of a  
16 public record if the public agency, public official, public employee,  
17 or custodian, or the legislative branch acted in good faith in  
18 attempting to comply with the provisions of this chapter.

19 **Sec. 104.** RCW 42.56.070 and 2017 c 304 s 1 are each amended to  
20 read as follows:

21 (1) Each agency and the legislative branch, in accordance with  
22 published rules, shall make available for public inspection and  
23 copying all public records, unless the record falls within the  
24 specific exemptions of subsection (8) of this section, this chapter,  
25 or other statute which exempts or prohibits disclosure of specific  
26 information or records. To the extent required to prevent an  
27 unreasonable invasion of personal privacy interests protected by this  
28 chapter, an agency or the legislative branch shall delete identifying  
29 details in a manner consistent with this chapter when it makes  
30 available or publishes any public record; however, in each case, the  
31 justification for the deletion shall be explained fully in writing.

32 (2) For informational purposes, each agency and the legislative  
33 branch shall publish and maintain a current list containing every  
34 law, other than those listed in this chapter, that the agency or  
35 legislative branch believes exempts or prohibits disclosure of  
36 specific information or records of the agency or legislative branch.  
37 An agency's or the legislative branch's failure to list an exemption  
38 shall not affect the efficacy of any exemption.

1       (3) Each local agency shall maintain and make available for  
2 public inspection and copying a current index providing identifying  
3 information as to the following records issued, adopted, or  
4 promulgated after January 1, 1973:

5       (a) Final opinions, including concurring and dissenting opinions,  
6 as well as orders, made in the adjudication of cases;

7       (b) Those statements of policy and interpretations of policy,  
8 statute, and the Constitution which have been adopted by the agency;

9       (c) Administrative staff manuals and instructions to staff that  
10 affect a member of the public;

11       (d) Planning policies and goals, and interim and final planning  
12 decisions;

13       (e) Factual staff reports and studies, factual consultant's  
14 reports and studies, scientific reports and studies, and any other  
15 factual information derived from tests, studies, reports, or surveys,  
16 whether conducted by public employees or others; and

17       (f) Correspondence, and materials referred to therein, by and  
18 with the agency relating to any regulatory, supervisory, or  
19 enforcement responsibilities of the agency, whereby the agency  
20 determines, or opines upon, or is asked to determine or opine upon,  
21 the rights of the state, the public, a subdivision of state  
22 government, or of any private party.

23       (4) A local agency need not maintain such an index, if to do so  
24 would be unduly burdensome, but it shall in that event:

25       (a) Issue and publish a formal order specifying the reasons why  
26 and the extent to which compliance would unduly burden or interfere  
27 with agency operations; and

28       (b) Make available for public inspection and copying all indexes  
29 maintained for agency use.

30       (5) Each state agency shall, by rule, establish and implement a  
31 system of indexing for the identification and location of the  
32 following records:

33       (a) All records issued before July 1, 1990, for which the agency  
34 has maintained an index;

35       (b) Final orders entered after June 30, 1990, that are issued in  
36 adjudicative proceedings as defined in RCW 34.05.010 and that contain  
37 an analysis or decision of substantial importance to the agency in  
38 carrying out its duties;

39       (c) Declaratory orders entered after June 30, 1990, that are  
40 issued pursuant to RCW 34.05.240 and that contain an analysis or

1 decision of substantial importance to the agency in carrying out its  
2 duties;

3 (d) Interpretive statements as defined in RCW 34.05.010 that were  
4 entered after June 30, 1990; and

5 (e) Policy statements as defined in RCW 34.05.010 that were  
6 entered after June 30, 1990.

7 Rules establishing systems of indexing shall include, but not be  
8 limited to, requirements for the form and content of the index, its  
9 location and availability to the public, and the schedule for  
10 revising or updating the index. State agencies that have maintained  
11 indexes for records issued before July 1, 1990, shall continue to  
12 make such indexes available for public inspection and copying.  
13 Information in such indexes may be incorporated into indexes prepared  
14 pursuant to this subsection. State agencies may satisfy the  
15 requirements of this subsection by making available to the public  
16 indexes prepared by other parties but actually used by the agency in  
17 its operations. State agencies shall make indexes available for  
18 public inspection and copying. State agencies may charge a fee to  
19 cover the actual costs of providing individual mailed copies of  
20 indexes.

21 (6) A public record may be relied on, used, or cited as precedent  
22 by an agency against a party other than an agency and it may be  
23 invoked by the agency for any other purpose only if:

24 (a) It has been indexed in an index available to the public; or

25 (b) Parties affected have timely notice (actual or constructive)  
26 of the terms thereof.

27 (7) Each agency and the legislative branch may establish,  
28 maintain, and make available for public inspection and copying a  
29 statement of the actual costs that it charges for providing  
30 photocopies or electronically produced copies, of public records and  
31 a statement of the factors and manner used to determine the actual  
32 costs. Any statement of costs may be adopted by an agency only after  
33 providing notice and public hearing.

34 (a)(i) In determining the actual cost for providing copies of  
35 public records, an agency or the legislative branch may include all  
36 costs directly incident to copying such public records including:

37 (A) The actual cost of the paper and the per page cost for use of  
38 agency or legislative branch copying equipment; and

1 (B) The actual cost of the electronic production or file transfer  
2 of the record and the use of any cloud-based data storage and  
3 processing service.

4 (ii) In determining other actual costs for providing copies of  
5 public records, an agency or the legislative branch may include all  
6 costs directly incident to:

7 (A) Shipping such public records, including the cost of postage  
8 or delivery charges and the cost of any container or envelope used;  
9 and

10 (B) Transmitting such records in an electronic format, including  
11 the cost of any transmission charge and use of any physical media  
12 device provided by the agency or the legislative branch.

13 (b) In determining the actual costs for providing copies of  
14 public records, an agency or the legislative branch may not include  
15 staff salaries, benefits, or other general administrative or overhead  
16 charges, unless those costs are directly related to the actual cost  
17 of copying the public records. Staff time to copy and send the  
18 requested public records may be included in an agency's or the  
19 legislative branch's costs.

20 (8) This chapter shall not be construed as giving authority to  
21 any agency(~~(, the office of the secretary of the senate, or the~~  
22 ~~office of the chief clerk of the house of representatives))~~ or the  
23 legislative branch to give, sell or provide access to lists of  
24 individuals requested for commercial purposes, and agencies(~~(, the~~  
25 ~~office of the secretary of the senate, and the office of the chief~~  
26 ~~clerk of the house of representatives))~~ and the legislative branch  
27 shall not do so unless specifically authorized or directed by law:  
28 PROVIDED, HOWEVER, That lists of applicants for professional licenses  
29 and of professional licensees shall be made available to those  
30 professional associations or educational organizations recognized by  
31 their professional licensing or examination board, upon payment of a  
32 reasonable charge therefor: PROVIDED FURTHER, That such recognition  
33 may be refused only for a good cause pursuant to a hearing under the  
34 provisions of chapter 34.05 RCW, the administrative procedure act.

35 **Sec. 105.** RCW 42.56.080 and 2017 c 304 s 2 are each amended to  
36 read as follows:

37 (1) A public records request must be for identifiable records. A  
38 request for all or substantially all records prepared, owned, used,  
39 or retained by an agency is not a valid request for identifiable



1 records under this chapter, provided that a request for all records  
2 regarding a particular topic or containing a particular keyword or  
3 name shall not be considered a request for all of an agency's  
4 records. For the legislative branch, a request for all or  
5 substantially all records prepared, owned, used, or retained by the  
6 legislative branch, a legislative chamber or agency, a legislative  
7 caucus, or an individual legislator, is not a valid request for  
8 identifiable records under this chapter, unless that request is  
9 regarding a particular topic.

10 (2) Public records shall be available for inspection and copying,  
11 and agencies and the legislative branch shall, upon request for  
12 identifiable public records, make them promptly available to any  
13 person including, if applicable, on a partial or installment basis as  
14 records that are part of a larger set of requested records are  
15 assembled or made ready for inspection or disclosure. Agencies and  
16 the legislative branch shall not deny a request for identifiable  
17 public records solely on the basis that the request is overbroad.  
18 Agencies and the legislative branch shall not distinguish among  
19 persons requesting records, and such persons shall not be required to  
20 provide information as to the purpose for the request except to  
21 establish whether inspection and copying would violate RCW  
22 42.56.070(8) or 42.56.240(14), or other statute which exempts or  
23 prohibits disclosure of specific information or records to certain  
24 persons. Agency and legislative branch facilities shall be made  
25 available to any person for the copying of public records except when  
26 and to the extent that this would unreasonably disrupt the operations  
27 of the agency or the legislative branch. Agencies and the legislative  
28 branch shall honor requests received in person during an agency's  
29 normal office hours, or by mail or email, for identifiable public  
30 records unless exempted by provisions of this chapter. No official  
31 format is required for making a records request; however, agencies  
32 and the legislative branch may recommend that requestors submit  
33 requests using an agency provided form or web page.

34 (3) An agency or the legislative branch may deny a bot request  
35 that is one of multiple requests from the requestor to the agency or  
36 legislative branch within a twenty-four hour period, if the agency or  
37 legislative branch establishes that responding to the multiple  
38 requests would cause excessive interference with other essential  
39 functions of the agency or legislative branch. For purposes of this  
40 subsection, "bot request" means a request for public records that an

1 agency or the legislative branch reasonably believes was  
2 automatically generated by a computer program or script.

3 **Sec. 106.** RCW 42.56.120 and 2017 c 304 s 3 are each amended to  
4 read as follows:

5 (1) No fee shall be charged for the inspection of public records  
6 or locating public documents and making them available for copying,  
7 except as provided in RCW 42.56.240(14) and subsection (3) of this  
8 section. A reasonable charge may be imposed for providing copies of  
9 public records and for the use by any person of agency equipment or  
10 equipment of the ~~((office of the secretary of the senate or the~~  
11 ~~office of the chief clerk of the house of representatives))~~  
12 legislative branch to copy public records, which charges shall not  
13 exceed the amount necessary to reimburse the agency ~~((, the office of~~  
14 ~~the secretary of the senate, or the office of the chief clerk of the~~  
15 ~~house of representatives))~~ or the legislative branch for its actual  
16 costs directly incident to such copying. When calculating any fees  
17 authorized under this section, an agency or the legislative branch  
18 shall use the most reasonable cost-efficient method available to the  
19 agency or legislative branch as part of its normal operations. If any  
20 agency or the legislative branch translates a record into an  
21 alternative electronic format at the request of a requestor, the copy  
22 created does not constitute a new public record for purposes of this  
23 chapter. Scanning paper records to make electronic copies of such  
24 records is a method of copying paper records and does not amount to  
25 the creation of a new public record.

26 (2)(a) Agency or legislative branch charges for actual costs may  
27 ~~((only))~~ be imposed only in accordance with the costs established and  
28 published by the agency or legislative branch pursuant to RCW  
29 42.56.070(7), and in accordance with the statement of factors and  
30 manner used to determine the actual costs. In no event may an agency  
31 or the legislative branch charge a per page cost greater than the  
32 actual cost as established and published by the agency or legislative  
33 branch.

34 (b) An agency or the legislative branch need not calculate the  
35 actual costs it charges for providing public records if it has rules  
36 or regulations declaring the reasons doing so would be unduly  
37 burdensome. To the extent the agency or the legislative branch has  
38 not determined the actual costs of copying public records, the agency  
39 or legislative branch may not charge in excess of:

1 (i) Fifteen cents per page for photocopies of public records,  
2 printed copies of electronic public records when requested by the  
3 person requesting records, or for the use of agency or legislative  
4 branch equipment to photocopy public records;

5 (ii) Ten cents per page for public records scanned into an  
6 electronic format or for the use of agency or legislative branch  
7 equipment to scan the records;

8 (iii) Five cents per each four electronic files or attachment  
9 uploaded to email, cloud-based data storage service, or other means  
10 of electronic delivery; and

11 (iv) Ten cents per gigabyte for the transmission of public  
12 records in an electronic format or for the use of agency or  
13 legislative branch equipment to send the records electronically. The  
14 agency or legislative branch shall take reasonable steps to provide  
15 the records in the most efficient manner available to the agency in  
16 its normal operations; and

17 (v) The actual cost of any digital storage media or device  
18 provided by the agency or legislative branch, the actual cost of any  
19 container or envelope used to mail the copies to the requestor, and  
20 the actual postage or delivery charge.

21 (c) The charges in (b) of this subsection may be combined to the  
22 extent that more than one type of charge applies to copies produced  
23 in response to a particular request.

24 (d) An agency or the legislative branch may charge a flat fee of  
25 up to two dollars for any request as an alternative to fees  
26 authorized under (a) or (b) of this subsection when the agency or  
27 legislative branch reasonably estimates and documents that the costs  
28 allowed under this subsection are clearly equal to or more than two  
29 dollars. An additional flat fee shall not be charged for any  
30 installment after the first installment of a request produced in  
31 installments. An agency or the legislative branch that has elected to  
32 charge the flat fee in this subsection for an initial installment may  
33 not charge the fees authorized under (a) or (b) of this subsection on  
34 subsequent installments.

35 (e) An agency or the legislative branch shall not impose copying  
36 charges under this section for access to or downloading of records  
37 that the agency or legislative branch routinely posts on its public  
38 internet web site prior to receipt of a request unless the requestor  
39 has specifically requested that the agency or legislative branch  
40 provide copies of such records through other means.

1 (f) A requestor may ask an agency or the legislative branch to  
2 provide, and if requested an agency or the legislative branch shall  
3 provide, a summary of the applicable charges before any copies are  
4 made and the requestor may revise the request to reduce the number of  
5 copies to be made and reduce the applicable charges.

6 (3) (a) (i) In addition to the charge imposed for providing copies  
7 of public records and for the use by any person of agency or  
8 legislative branch equipment copying costs, an agency or the  
9 legislative branch may include a customized service charge. A  
10 customized service charge may ~~((only))~~ be imposed only if the agency  
11 or legislative branch estimates that the request would require the  
12 use of information technology expertise to prepare data compilations,  
13 or provide customized electronic access services when such  
14 compilations and customized access services are not used by the  
15 agency or legislative branch for other agency or legislative branch  
16 purposes.

17 (ii) The customized service charge may reimburse the agency or  
18 legislative branch up to the actual cost of providing the services in  
19 this subsection.

20 (b) An agency or the legislative branch may not assess a  
21 customized service charge unless the agency or legislative branch has  
22 notified the requestor of the customized service charge to be applied  
23 to the request, including an explanation of why the customized  
24 service charge applies, a description of the specific expertise, and  
25 a reasonable estimate cost of the charge. The notice also must  
26 provide the requestor the opportunity to amend his or her request in  
27 order to avoid or reduce the cost of a customized service charge.

28 (4) An agency or the legislative branch may require a deposit in  
29 an amount not to exceed ten percent of the estimated cost of  
30 providing copies for a request, including a customized service  
31 charge. If an agency or the legislative branch makes a request  
32 available on a partial or installment basis, the agency or  
33 legislative branch may charge for each part of the request as it is  
34 provided. If an installment of a records request is not claimed or  
35 reviewed, the agency or legislative branch is not obligated to  
36 fulfill the balance of the request. An agency or the legislative  
37 branch may waive any charge assessed for a request pursuant to agency  
38 or legislative branch rules and regulations. An agency or the  
39 legislative branch may enter into any contract, memorandum of  
40 understanding, or other agreement with a requestor that provides an

1 alternative fee arrangement to the charges authorized in this  
2 section, or in response to a voluminous or frequently occurring  
3 request.

4 **Sec. 107.** RCW 42.56.150 and 2014 c 66 s 3 are each amended to  
5 read as follows:

6 (1) Each (~~((local elected official and statewide))~~) elected  
7 official, and each person appointed to fill a vacancy in (~~((a local or~~  
8 ~~statewide))~~) elective office, must complete a training course  
9 regarding the provisions of this chapter, and also chapter 40.14 RCW  
10 for records retention.

11 (2) Officials required to complete training under this section  
12 may complete their training before assuming office but must:

13 (a) Complete training no later than ninety days after the date  
14 the official either:

15 (i) Takes the oath of office, if the official is required to take  
16 an oath of office to assume his or her duties as a public official;  
17 or

18 (ii) Otherwise assumes his or her duties as a public official;  
19 and

20 (b) Complete refresher training at intervals of no more than four  
21 years for as long as he or she holds the office.

22 (3) Training must be consistent with the attorney general's model  
23 rules for compliance with the public records act.

24 (4) Training may be completed remotely with technology including  
25 but not limited to internet-based training.

26 **Sec. 108.** RCW 42.56.210 and 2005 c 274 s 402 are each amended to  
27 read as follows:

28 (1) Except for information described in RCW 42.56.230(~~((+3))~~) (4)

29 (a) and confidential income data exempted from public inspection  
30 pursuant to RCW 84.40.020, the exemptions of this chapter are  
31 inapplicable to the extent that information, the disclosure of which  
32 would violate personal privacy or vital governmental interests, can  
33 be deleted from the specific records sought. No exemption may be  
34 construed to permit the nondisclosure of statistical information not  
35 descriptive of any readily identifiable person or persons.

36 (2) Inspection or copying of any specific records exempt under  
37 the provisions of this chapter may be permitted if the superior court  
38 in the county in which the record is maintained finds, after a

1 hearing with notice thereof to every person in interest and the  
2 agency, that the exemption of such records is clearly unnecessary to  
3 protect any individual's right of privacy or any vital governmental  
4 function.

5 (3) (~~(Agency)~~) Responses refusing, in whole or in part,  
6 inspection of any public record shall include a statement of the  
7 specific exemption authorizing the withholding of the record (or  
8 part) and a brief explanation of how the exemption applies to the  
9 record withheld.

10 **Sec. 109.** RCW 42.56.230 and 2018 c 109 s 16 are each amended to  
11 read as follows:

12 The following personal information is exempt from public  
13 inspection and copying under this chapter:

14 (1) Personal information in any files maintained for students in  
15 public schools, patients or clients of public institutions or public  
16 health agencies, or welfare recipients;

17 (2)(a) Personal information:

18 (i) For a child enrolled in licensed child care in any files  
19 maintained by the department of children, youth, and families;

20 (ii) For a child enrolled in a public or nonprofit program  
21 serving or pertaining to children, adolescents, or students,  
22 including but not limited to early learning or child care services,  
23 parks and recreation programs, youth development programs, and after-  
24 school programs; or

25 (iii) For the family members or guardians of a child who is  
26 subject to the exemption under this subsection (2) if the family  
27 member or guardian has the same last name as the child or if the  
28 family member or guardian resides at the same address as the child  
29 and disclosure of the family member's or guardian's information would  
30 result in disclosure of the personal information exempted under  
31 (a)(i) and (ii) of this subsection.

32 (b) Emergency contact information under this subsection (2) may  
33 be provided to appropriate authorities and medical personnel for the  
34 purpose of treating the individual during an emergency situation;

35 (3) Personal information in files maintained for employees,  
36 appointees, or elected officials of any public agency or the  
37 legislative branch to the extent that disclosure would violate their  
38 right to privacy;

1 (4) Information required of any taxpayer in connection with the  
2 assessment or collection of any tax if the disclosure of the  
3 information to other persons would: (a) Be prohibited to such persons  
4 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance  
5 authorized under RCW 35.102.145; or (b) violate the taxpayer's right  
6 to privacy or result in unfair competitive disadvantage to the  
7 taxpayer;

8 (5) Credit card numbers, debit card numbers, electronic check  
9 numbers, card expiration dates, or bank or other financial  
10 information as defined in RCW 9.35.005 including social security  
11 numbers, except when disclosure is expressly required by or governed  
12 by other law;

13 (6) Personal and financial information related to a small loan or  
14 any system of authorizing a small loan in RCW 31.45.093;

15 (7)(a) Any record used to prove identity, age, residential  
16 address, social security number, or other personal information  
17 required to apply for a driver's license or identicard.

18 (b) Information provided under RCW 46.20.111 that indicates that  
19 an applicant declined to register with the selective service system.

20 (c) Any record pertaining to a vehicle license plate, driver's  
21 license, or identicard issued under RCW 46.08.066 that, alone or in  
22 combination with any other records, may reveal the identity of an  
23 individual, or reveal that an individual is or was, performing an  
24 undercover or covert law enforcement, confidential public health  
25 work, public assistance fraud, or child support investigative  
26 activity. This exemption does not prevent the release of the total  
27 number of vehicle license plates, drivers' licenses, or identicards  
28 that, under RCW 46.08.066, an agency or department has applied for,  
29 been issued, denied, returned, destroyed, lost, and reported for  
30 misuse.

31 (d) Any record pertaining to a vessel registration issued under  
32 RCW 88.02.330 that, alone or in combination with any other records,  
33 may reveal the identity of an individual, or reveal that an  
34 individual is or was, performing an undercover or covert law  
35 enforcement activity. This exemption does not prevent the release of  
36 the total number of vessel registrations that, under RCW 88.02.330,  
37 an agency or department has applied for, been issued, denied,  
38 returned, destroyed, lost, and reported for misuse;

39 (8) All information related to individual claims resolution  
40 structured settlement agreements submitted to the board of industrial

1 insurance appeals under RCW 51.04.063, other than final orders from  
2 the board of industrial insurance appeals.

3 Upon request by the legislature, the department of licensing  
4 shall provide a report to the legislature containing all of the  
5 information in subsection (7)(c) and (d) of this section that is  
6 subject to public disclosure;

7 (9) Voluntarily submitted information contained in a database  
8 that is part of or associated with enhanced 911 emergency  
9 communications systems, or information contained or used in emergency  
10 notification systems as provided under RCW 38.52.575 and 38.52.577;  
11 and

12 (10) Until the person reaches eighteen years of age, information,  
13 otherwise disclosable under chapter 29A.08 RCW, that relates to a  
14 future voter, except for the purpose of processing and delivering  
15 ballots.

16 **Sec. 110.** RCW 42.56.250 and 2018 c 109 s 17 are each amended to  
17 read as follows:

18 The following employment and licensing information is exempt from  
19 public inspection and copying under this chapter:

20 (1) Test questions, scoring keys, and other examination data used  
21 to administer a license, employment, or academic examination;

22 (2) All applications for public employment, including the names  
23 of applicants, resumes, and other related materials submitted with  
24 respect to an applicant;

25 (3) Professional growth plans (PGPs) in educator license renewals  
26 submitted through the eCert system in the office of the  
27 superintendent of public instruction;

28 (4) The following information held by any public agency or the  
29 legislative branch in personnel records, public employment related  
30 records, volunteer rosters, or included in any mailing list of  
31 employees or volunteers of any public agency: Residential addresses,  
32 residential telephone numbers, personal wireless telephone numbers,  
33 personal email addresses, social security numbers, driver's license  
34 numbers, identicard numbers, and emergency contact information of  
35 employees or volunteers of a public agency, and the names, dates of  
36 birth, residential addresses, residential telephone numbers, personal  
37 wireless telephone numbers, personal email addresses, social security  
38 numbers, and emergency contact information of dependents of employees  
39 or volunteers of a public agency. For purposes of this subsection,



1 "employees" includes independent provider home care workers as  
2 defined in RCW 74.39A.240;

3 (5) Information that identifies a person who, while an agency or  
4 legislative employee: (a) Seeks advice, under an informal process  
5 established by the employing agency, in order to ascertain his or her  
6 rights in connection with a possible unfair practice under chapter  
7 49.60 RCW against the person; and (b) requests his or her identity or  
8 any identifying information not be disclosed;

9 (6) Investigative records compiled by an employing agency or the  
10 legislative branch conducting an active and ongoing investigation of  
11 a possible unfair practice under chapter 49.60 RCW or of a possible  
12 violation of other federal, state, or local laws prohibiting  
13 discrimination in employment;

14 (7) Criminal history records checks for board staff finalist  
15 candidates conducted pursuant to RCW 43.33A.025;

16 (8) Except as provided in RCW 47.64.220, salary and benefit  
17 information for maritime employees collected from private employers  
18 under RCW 47.64.220(1) and described in RCW 47.64.220(2);

19 (9) Photographs and month and year of birth in the personnel  
20 files of employees and workers of criminal justice agencies as  
21 defined in RCW 10.97.030. The news media, as defined in RCW  
22 5.68.010(5), shall have access to the photographs and full date of  
23 birth. For the purposes of this subsection, news media does not  
24 include any person or organization of persons in the custody of a  
25 criminal justice agency as defined in RCW 10.97.030;

26 (10) The global positioning system data that would indicate the  
27 location of the residence of a public employee or volunteer using the  
28 global positioning system recording device; and

29 (11) Until the person reaches eighteen years of age, information,  
30 otherwise disclosable under chapter 29A.08 RCW, that relates to a  
31 future voter, except for the purpose of processing and delivering  
32 ballots.

33 **Sec. 111.** RCW 42.56.280 and 2005 c 274 s 408 are each amended to  
34 read as follows:

35 (1) The following records of the legislative branch are  
36 permanently exempt from disclosure:

37 (a) Drafts of bills and drafts of amendments to bills, including  
38 bills not introduced before the legislature and amendments not  
39 offered on legislation;

1 (b) Memoranda from staff or members of the legislative branch  
2 containing legal, policy, or fiscal options, analyses, models, or  
3 analytical tools;

4 (c) Proposals, offers, counteroffers, or other records of  
5 negotiations between and among legislators, caucuses, or chambers on  
6 bills;

7 (d) Any record of how a legislator intends to vote on an item  
8 before a committee or chamber of the legislature;

9 (e) Records of internal caucus communications, including but not  
10 limited to caucus leadership votes, votes to determine legislative  
11 committee structure or membership, and communications strategy  
12 materials;

13 (f) Notes taken by staff or members of the legislature for the  
14 use of the person taking the notes;

15 (g) Investigative records such as notes and witness statements  
16 that are generated preliminary to a determination of reasonable cause  
17 or dismissal of a complaint before the legislative ethics board or,  
18 within the legislative branch, pursuant to an allegation of a  
19 violation of an antiharassment or safe workplace policy; and

20 (h) Personally identifying information in communications with  
21 individuals, including names, dates of birth, residential addresses,  
22 residential telephone numbers, personal wireless telephone numbers,  
23 personal email addresses, social security numbers, driver's license  
24 numbers, identicard numbers, and emergency contact information,  
25 provided that public records in which this information is included  
26 must be disclosed once the information has been redacted. The  
27 exemption under this subsection (1)(h) does not apply to: The names  
28 of lobbyists required to register under chapter 42.17A RCW; lobbyist  
29 employers as defined in chapter 42.17A RCW; sponsors of a grass roots  
30 lobbying campaign under RCW 42.17A.640; or public employees who lobby  
31 under RCW 42.17A.635.

32 (2) For state agencies and local governments not subject to  
33 subsection (1) of this section, preliminary drafts, notes,  
34 recommendations, and intra-agency (~~memorandums~~) memoranda in which  
35 opinions are expressed or policies formulated or recommended are  
36 exempt under this chapter, except that a specific record is not  
37 exempt when publicly cited by an agency in connection with any agency  
38 action.

1       **Sec. 112.** RCW 42.56.290 and 2005 c 274 s 409 are each amended to  
2 read as follows:

3       Records that are relevant to a controversy to which an agency or  
4 the legislative branch is a party but which records would not be  
5 available to another party under the rules of pretrial discovery for  
6 causes pending in the superior courts are exempt from disclosure  
7 under this chapter.

8       **Sec. 113.** RCW 42.56.520 and 2017 c 303 s 3 are each amended to  
9 read as follows:

10       (1) Responses to requests for public records shall be made  
11 promptly by agencies(~~((, the office of the secretary of the senate,~~  
12 ~~and the office of the chief clerk of the house of representatives))~~  
13 or the legislative branch. Within five business days of receiving a  
14 public record request, an agency(~~((, the office of the secretary of~~  
15 ~~the senate, or the office of the chief clerk of the house of~~  
16 ~~representatives))~~ or the legislative branch must respond in one of  
17 the ways provided in this subsection (1):

18       (a) Providing the record;

19       (b) Providing an internet address and link on the agency's or the  
20 legislative web site to the specific records requested, except that  
21 if the requester notifies the agency or legislative branch that he or  
22 she cannot access the records through the internet, then the agency  
23 or legislative branch must provide copies of the record or allow the  
24 requester to view copies using an agency or legislative branch  
25 computer;

26       (c) Acknowledging that the agency(~~((, the office of the secretary~~  
27 ~~of the senate, or the office of the chief clerk of the house of~~  
28 ~~representatives))~~ or legislative branch has received the request and  
29 providing a reasonable estimate of the time the agency(~~((, the office~~  
30 ~~of the secretary of the senate, or the office of the chief clerk of~~  
31 ~~the house of representatives))~~ or legislative branch will require to  
32 respond to the request;

33       (d) Acknowledging that the agency(~~((, the office of the secretary~~  
34 ~~of the senate, or the office of the chief clerk of the house of~~  
35 ~~representatives))~~ or legislative branch has received the request and  
36 asking the requestor to provide clarification for a request that is  
37 unclear, and providing, to the greatest extent possible, a reasonable  
38 estimate of the time the agency(~~((, the office of the secretary of the~~  
39 ~~senate, or the office of the chief clerk of the house of~~

1 ~~representatives))~~ or legislative branch will require to respond to  
2 the request if it is not clarified; or

3 (e) Denying the public record request.

4 (2) Additional time required to respond to a request may be based  
5 upon the need to clarify the intent of the request, to locate and  
6 assemble the information requested, to notify third persons or  
7 agencies affected by the request, ~~((or))~~ to determine whether any of  
8 the information requested is exempt and that a denial should be made  
9 as to all or part of the request, or for requests to the legislative  
10 branch, when the legislature is in session.

11 (3)(a) In acknowledging receipt of a public record request that  
12 is unclear, an agency(~~(, the office of the secretary of the senate,~~  
13 ~~or the office of the chief clerk of the house of representatives))~~ or  
14 the legislative branch may ask the requestor to clarify what  
15 information the requestor is seeking.

16 (b) If the requestor fails to respond to an agency or legislative  
17 branch request to clarify the request, and the entire request is  
18 unclear, the agency(~~(, the office of the secretary of the senate, or~~  
19 ~~the office of the chief clerk of the house of representatives))~~ or  
20 legislative branch need not respond to it. Otherwise, the agency or  
21 legislative branch must respond, pursuant to this section, to those  
22 portions of the request that are clear.

23 (4) Denials of requests must be accompanied by a written  
24 statement of the specific reasons therefor. Agencies(~~(, the office of~~  
25 ~~the secretary of the senate, and the office of the chief clerk of the~~  
26 ~~house of representatives))~~ and the legislative branch shall establish  
27 mechanisms for the most prompt possible review of decisions denying  
28 inspection, and such review shall be deemed completed at the end of  
29 the second business day following the denial of inspection and shall  
30 constitute final agency action or final action by the ~~((office of the~~  
31 ~~secretary of the senate or the office of the chief clerk of the house~~  
32 ~~of representatives))~~ legislative branch for the purposes of judicial  
33 review.

34 **Sec. 114.** RCW 42.56.540 and 1992 c 139 s 7 are each amended to  
35 read as follows:

36 The examination of any specific public record may be enjoined if,  
37 upon motion and affidavit by an agency ~~((or))~~, its representative,  
38 the legislative branch, an individual legislator, or a person who is  
39 named in the record or to whom the record specifically pertains, the

1 superior court for the county in which the movant resides or in which  
2 the record is maintained, finds that such examination would clearly  
3 not be in the public interest and would substantially and irreparably  
4 damage any person, or would substantially and irreparably damage  
5 vital governmental functions. An agency or the legislative branch has  
6 the option of notifying persons named in the record or to whom a  
7 record specifically pertains, that release of a record has been  
8 requested. However, this option does not exist where the agency or  
9 legislative branch is required by law to provide such notice.

10 **Sec. 115.** RCW 42.56.565 and 2011 c 300 s 1 are each amended to  
11 read as follows:

12 (1) A court shall not award penalties under RCW 42.56.550(~~((4))~~)  
13 (5) to a person who was serving a criminal sentence in a state,  
14 local, or privately operated correctional facility on the date the  
15 request for public records was made, unless the court finds that the  
16 agency or legislative branch acted in bad faith in denying the person  
17 the opportunity to inspect or copy a public record.

18 (2) The inspection or copying of any nonexempt public record by  
19 persons serving criminal sentences in state, local, or privately  
20 operated correctional facilities may be enjoined pursuant to this  
21 section.

22 (a) The injunction may be requested by: (i) An agency or its  
23 representative; (ii) an individual legislator; (iii) the secretary of  
24 the senate; (iv) the chief clerk of the house of representatives; (v)  
25 a person named in the record or his or her representative; or  
26 (~~((iii))~~) (vi) a person to whom the requests specifically pertains or  
27 his or her representative.

28 (b) The request must be filed in: (i) The superior court in which  
29 the movant resides; or (ii) the superior court in the county in which  
30 the record is maintained.

31 (c) In order to issue an injunction, the court must find that:

32 (i) The request was made to harass or intimidate the agency, the  
33 legislative branch, or its employees;

34 (ii) Fulfilling the request would likely threaten the security of  
35 correctional facilities;

36 (iii) Fulfilling the request would likely threaten the safety or  
37 security of staff, inmates, family members of staff, family members  
38 of other inmates, or any other person; or

39 (iv) Fulfilling the request may assist criminal activity.

1 (3) In deciding whether to enjoin a request under subsection (2)  
2 of this section, the court may consider all relevant factors  
3 including, but not limited to:

4 (a) Other requests by the requestor;

5 (b) The type of record or records sought;

6 (c) Statements offered by the requestor concerning the purpose  
7 for the request;

8 (d) Whether disclosure of the requested records would likely harm  
9 any person or vital government interest;

10 (e) Whether the request seeks a significant and burdensome number  
11 of documents;

12 (f) The impact of disclosure on correctional facility security  
13 and order, the safety or security of correctional facility staff,  
14 inmates, or others; and

15 (g) The deterrence of criminal activity.

16 (4) The motion proceeding described in this section shall be a  
17 summary proceeding based on affidavits or declarations, unless the  
18 court orders otherwise. Upon a showing by a preponderance of the  
19 evidence, the court may enjoin all or any part of a request or  
20 requests. Based on the evidence, the court may also enjoin, for a  
21 period of time the court deems reasonable, future requests by:

22 (a) The same requestor; or

23 (b) An entity owned or controlled in whole or in part by the same  
24 requestor.

25 (5) An agency or the legislative branch shall not be liable for  
26 penalties under RCW 42.56.550(~~((4))~~) (5) for any period during which  
27 an order under this section is in effect, including during an appeal  
28 of an order under this section, regardless of the outcome of the  
29 appeal.

30 **Sec. 116.** RCW 42.56.580 and 2007 c 456 s 6 are each amended to  
31 read as follows:

32 (1) Each state and local agency shall appoint and publicly  
33 identify a public records officer (~~(whose)~~). The secretary of the  
34 senate, or his or her designee, is the public records officer for the  
35 senate and senators, senate committees, and senate staff. The chief  
36 clerk of the house of representatives, or his or her designee, is the  
37 public records officer for the house of representatives, members of  
38 the house of representatives, house of representatives committees,  
39 and house of representatives staff. The secretary and the chief

1 clerk, or their respective designees, are jointly the public records  
2 officers for the senate and the house of representatives  
3 collectively, for joint committees, and for agencies of the  
4 legislative branch.

5 (2) The responsibility of the public records officer is to serve  
6 as a point of contact for members of the public in requesting  
7 disclosure of public records and to oversee ~~((the agency's))~~  
8 compliance with the public records disclosure requirements of this  
9 chapter by the agency or legislative branch. A state or local  
10 agency's public records officer may appoint an employee or official  
11 of another agency as its public records officer.

12 ~~((+2))~~ (3) For state agencies, the name and contact information  
13 of the agency's public records officer to whom members of the public  
14 may direct requests for disclosure of public records and who will  
15 oversee the agency's compliance with the public records disclosure  
16 requirements of this chapter shall be published in the state register  
17 at the time of designation and maintained thereafter on the code  
18 reviser web site for the duration of the designation.

19 ~~((+3))~~ (4) For local agencies, the name and contact information  
20 of the agency's public records officer to whom members of the public  
21 may direct requests for disclosure of public records and who will  
22 oversee the agency's compliance within the public records disclosure  
23 requirements of this chapter shall be made in a way reasonably  
24 calculated to provide notice to the public, including posting at the  
25 local agency's place of business, posting on its internet site, or  
26 including in its publications.

## 27 **PART II - WHISTLEBLOWER PROTECTIONS**

28 **Sec. 201.** RCW 42.40.020 and 2017 c 44 s 2 are each amended to  
29 read as follows:

30 As used in this chapter, the terms defined in this section shall  
31 have the meanings indicated unless the context clearly requires  
32 otherwise.

33 (1) "Auditor" means the office of the state auditor.

34 (2) "Employee" means any individual employed or holding office in  
35 any department or agency of state government.

36 (3) "Good faith" means the individual providing the information  
37 or report of improper governmental activity has a reasonable basis in  
38 fact for reporting or providing the information. An individual who

1 knowingly provides or reports, or who reasonably ought to know he or  
2 she is providing or reporting, malicious, false, or frivolous  
3 information, or information that is provided with reckless disregard  
4 for the truth, or who knowingly omits relevant information is not  
5 acting in good faith.

6 (4) "Gross mismanagement" means the exercise of management  
7 responsibilities in a manner grossly deviating from the standard of  
8 care or competence that a reasonable person would observe in the same  
9 situation.

10 (5) "Gross waste of funds" means to spend or use funds or to  
11 allow funds to be used without valuable result in a manner grossly  
12 deviating from the standard of care or competence that a reasonable  
13 person would observe in the same situation.

14 (6)(a) "Improper governmental action" means any action by an  
15 employee undertaken in the performance of the employee's official  
16 duties:

17 (i) Which is a gross waste of public funds or resources as  
18 defined in this section;

19 (ii) Which is in violation of federal or state law or rule, if  
20 the violation is not merely technical or of a minimum nature;

21 (iii) Which is of substantial and specific danger to the public  
22 health or safety;

23 (iv) Which is gross mismanagement;

24 (v) Which prevents the dissemination of scientific opinion or  
25 alters technical findings without scientifically valid justification,  
26 unless state law or a common law privilege prohibits disclosure. This  
27 provision is not meant to preclude the discretion of agency  
28 management to adopt a particular scientific opinion or technical  
29 finding from among differing opinions or technical findings. Nothing  
30 in this subsection prevents or impairs a state agency's or public  
31 official's ability to manage its public resources or its employees in  
32 the performance of their official job duties. This subsection does  
33 not apply to de minimis, technical disagreements that are not  
34 relevant for otherwise improper governmental activity. Nothing in  
35 this provision requires the auditor to contract or consult with  
36 external experts regarding the scientific validity, invalidity, or  
37 justification of a finding or opinion; or

38 (vi) Which violates the administrative procedure act or analogous  
39 provisions of law that prohibit ex parte communication regarding  
40



1 cases or matters pending in which an agency is party between the  
2 agency's employee and a presiding officer, hearing officer, or an  
3 administrative law judge. The availability of other avenues for  
4 addressing ex parte communication by agency employees does not bar an  
5 investigation by the auditor.

6 (b) "Improper governmental action" does not include personnel  
7 actions, for which other remedies exist, including but not limited to  
8 employee grievances, complaints, appointments, promotions, transfers,  
9 assignments, reassignments, reinstatements, restorations,  
10 reemployments, performance evaluations, reductions in pay,  
11 dismissals, suspensions, demotions, violations of the state civil  
12 service law, alleged labor agreement violations, reprimands, claims  
13 of discriminatory treatment, or any action which may be taken under  
14 chapter 41.06 RCW, or other disciplinary action except as provided in  
15 RCW 42.40.030.

16 (7) "Public official" means the attorney general's designee or  
17 designees; a legislator; the director, or equivalent thereof in the  
18 agency where the employee works; an appropriate number of individuals  
19 designated to receive whistleblower reports by the head of each  
20 agency; or the executive ethics board.

21 (8) "Substantial and specific danger" means a risk of serious  
22 injury, illness, peril, or loss, to which the exposure of the public  
23 is a gross deviation from the standard of care or competence which a  
24 reasonable person would observe in the same situation.

25 (9) "Use of official authority or influence" includes  
26 threatening, taking, directing others to take, recommending,  
27 processing, or approving any personnel action such as an appointment,  
28 promotion, transfer, assignment including but not limited to duties  
29 and office location, reassignment, reinstatement, restoration,  
30 reemployment, performance evaluation, determining any material  
31 changes in pay, provision of training or benefits, tolerance of a  
32 hostile work environment, or any adverse action under chapter 41.06  
33 RCW, or other disciplinary action.

34 (10)(a) "Whistleblower" means:

35 (i) An employee who in good faith reports alleged improper  
36 governmental action to the auditor or other public official, as  
37 defined in subsection (7) of this section; or

38 (ii) An employee who is perceived by the employer as reporting,  
39 whether they did or not, alleged improper governmental action to the

auditor or other public official, as defined in subsection (7) of this section.

(b) For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means:

(i) An employee who in good faith provides information to the auditor or other public official, as defined in subsection (7) of this section, and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, or to have provided information to the auditor or other public official, as defined in subsection (7) of this section, but who, in fact, has not reported such action or provided such information; or

(ii) An employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so.

**NEW SECTION.** **Sec. 202.** A new section is added to chapter 42.40 RCW to read as follows:

No legislator or employee of the legislative branch may be compelled to disclose the following information:

(1) Information identifying a person who:

(a) Makes a report of a possible improper governmental action as defined in RCW 42.40.020 to any legislator; and

(b) Requests his or her identity or any identifying information not be disclosed; or

(2) Investigative records compiled by a legislator conducting an investigation of a possible improper governmental action as defined in RCW 42.40.020.

**NEW SECTION.** **Sec. 203.** A new section is added to chapter 42.56 RCW to read as follows:

The following investigative information is exempt from public inspection and copying under this chapter:

(1) Information identifying a person who:

(a) Makes a report of a possible improper governmental action as defined in RCW 42.40.020 to any legislator; and

(b) Requests his or her identity or any identifying information not be disclosed; or

(2) Investigative records compiled by a legislator conducting an investigation of a possible improper governmental action as defined in RCW 42.40.020.

### PART III - RECORDS RETENTION OBLIGATIONS

**Sec. 301.** RCW 40.14.050 and 1985 c 192 s 1 are each amended to read as follows:

There is created a committee, to be known as the records committee, composed of the archivist, an appointee of the state auditor, an appointee of the attorney general, ~~((and))~~ an appointee of the director of financial management, an appointee of the chief clerk of the house of representatives, and an appointee of the secretary of the senate. Committee members shall serve without additional salary, but shall be entitled to travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such expenses shall be paid from the appropriations made for operation of their respective departments or offices.

The records committee shall meet at least once every quarter or oftener as business dictates. Action by the committee shall be by majority vote and records shall be kept of all committee business.

It shall be the duty of the records committee to approve, modify or disapprove the recommendations on retention schedules of all files of public records and to act upon requests to destroy any public records: PROVIDED, That any modification of a request or recommendation must be approved by the head of the agency originating the request or recommendation.

The division of archives and records management shall provide forms, approved by the records committee, upon which it shall prepare recommendations to the committee in cooperation with the records officer of the department or other agency whose records are involved.

**Sec. 302.** RCW 40.14.100 and 1971 ex.s. c 102 s 2 are each amended to read as follows:

As used in RCW 40.14.010 and 40.14.100 through ~~((40.14.180))~~ 40.14.120, unless the context requires otherwise, "legislative records" shall be defined as correspondence, amendments, reports, and

minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but does not include the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature.

**Sec. 303.** RCW 40.14.110 and 2011 c 336 s 819 are each amended to read as follows:

Nothing in RCW 40.14.010 and 40.14.100 through ~~((40.14.180))~~ 40.14.120 shall prohibit a legislator or legislative employee from contributing his or her personal papers to any private library, public library, or the state archives. The state archivist is authorized to receive papers of legislators and legislative employees and is directed to encourage the donation of such personal records to the state. The state archivist is authorized to establish such guidelines and procedures for the collection of personal papers and correspondence relating to the legislature as he or she sees fit. Legislators and legislative employees are encouraged to contribute their personal papers to the state for preservation.

**Sec. 304.** RCW 40.14.120 and 1971 ex.s. c 102 s 4 are each amended to read as follows:

As used in RCW 40.14.010 and 40.14.100 through ~~((40.14.180))~~ 40.14.120 "clerk" means clerk of the Washington state house of representatives and "secretary" means the secretary of the Washington state senate.

NEW SECTION. **Sec. 305.** The following acts or parts of acts are each repealed:

(1) RCW 40.14.130 (Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability) and 2011 c 336 s 820 & 1971 ex.s. c 102 s 5;

(2) RCW 40.14.140 (Legislative records—Party caucuses to be advised—Information and instructions) and 2011 c 336 s 821 & 1971 ex.s. c 102 s 6;

(3) RCW 40.14.150 (Legislative records—Use for research) and 1971 ex.s. c 102 s 7;

(4) RCW 40.14.160 (Legislative records—Rules for access to records) and 1971 ex.s. c 102 s 8;

(5) RCW 40.14.170 (Legislative records—Sound recordings) and 1971 ex.s. c 102 s 9; and

(6) RCW 40.14.180 (Legislative records—Construction—Confidentiality of bill drafting records) and 1983 c 3 s 85 & 1971 ex.s. c 102 s 10.

#### **PART IV - PROCEDURAL AND MISCELLANEOUS PROVISIONS**

**Sec. 401.** RCW 42.56.550 and 2017 c 304 s 5 are each amended to read as follows:

(1) Any records requests made to the legislative branch, its chambers, members, employees, or agencies before the effective date of this section under this chapter or other statutes must be renewed after the effective date of this section.

(2)(a) Upon the motion of any person having been denied an opportunity to inspect or copy a public record:

(i) By an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records; or

(ii) By the legislative branch, the superior court of Thurston county may require the legislative branch to show cause why it has refused to allow inspection or copying of a specific public record or class of records; provided that no claim may be filed against the legislative branch, its chambers, members, employees, or agencies for denial of an opportunity to inspect or copy a public record where the alleged denial occurred before the effective date of this section.

(b) The burden of proof shall be on the agency or legislative branch to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

1        ~~((+2))~~ (3) Upon the motion of any person who believes that an  
2 agency or the legislative branch has not made a reasonable estimate  
3 of the time that the agency or legislative branch requires to respond  
4 to a public record request or a reasonable estimate of the charges to  
5 produce copies of public records, the superior court ~~((in the county~~  
6 ~~in which a record is maintained))~~ may require the responsible agency  
7 or the legislative branch to show that the estimate it provided is  
8 reasonable. The burden of proof shall be on the agency or legislative  
9 branch to show that the estimate it provided is reasonable.

10        ~~((+3))~~ (4) Judicial review of all ~~((agency))~~ actions taken or  
11 challenged under RCW 42.56.030 through 42.56.520 shall be de novo.  
12 Courts shall take into account the policy of this chapter that free  
13 and open examination of public records is in the public interest,  
14 even though such examination may cause inconvenience or embarrassment  
15 to public officials or others. Courts may examine any record in  
16 camera in any proceeding brought under this section. The court may  
17 conduct a hearing based solely on affidavits. Judicial review of a  
18 denial of an opportunity to inspect or copy a public record by the  
19 legislative branch may not be sought when the record was  
20 inadvertently not retained prior to the effective date of this  
21 section.

22        ~~((+4))~~ (5) Any person who prevails against an agency or the  
23 legislative branch in any action in the courts seeking the right to  
24 inspect or copy any public record or the right to receive a response  
25 to a public record request within a reasonable amount of time shall  
26 be awarded all costs, including reasonable attorney fees, incurred in  
27 connection with such legal action. In addition, it shall be within  
28 the discretion of the court to award such person an amount not to  
29 exceed one hundred dollars for each day that he or she was denied the  
30 right to inspect or copy said public record.

31        ~~((+5))~~ (6) For actions under this section against counties, the  
32 venue provisions of RCW 36.01.050 apply.

33        ~~((+6))~~ (7) Actions under this section must be filed within one  
34 year of the agency's claim of exemption or the last production of a  
35 record on a partial or installment basis.

36        NEW SECTION.        **Sec. 402.**        RCW 42.56.560 (Application of RCW  
37 42.56.550) and 2005 c 274 s 289 & 1995 c 397 s 16 are each repealed.

1        NEW SECTION.    **Sec. 403.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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